USTELECOM
UNITED STATES TELECOM ASSOCIATION

May 14, 2007 **EX PARTE LETTER**

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWA325
Washington, DC 20554

Re: Petitions for Waiver of Section 76.1204(a)(1) of the Commission's Rules; CS Docket No. 97-80

Dear Ms. Dortch:

The United States Telecom Association (USTelecom)[1] through this ex parte letter supports several of its members' Petitions for Waiver of Section 76.1204(a)(1) of the Rules of the Federal Communications Commission (Commission).[2] Three USTelecom members, each of whom are in the early stages of deploying advanced digital video networks, are seeking a temporary waiver of the Commission's rule banning the distribution of integrated set-top boxes, which takes effect July 1, 2007. Importantly, and consistent with the provisions of §76.1207 of the Commission's rules, all of the Petitioners are seeking only a temporary waiver of the Commission's rules. Moreover, each has committed to deploying all-digital networks no later than the Commission's 2009 deadline for digital television conversion.

Congress explicitly required that the Commission "shall waive" its regulations "upon appropriate showing by a provider of multichannel video programming . . . that such waiver is necessary to assist the development of a new or improved multichannel video programming or other service."[3] Additionally, both the Commission and Congress have emphasized that enforcement of the rules under Section 629 should not have "the effect of freezing or chilling the development of new technologies and service."[4]

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[1] USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data, and video over wireline and wireless networks.

[2] USTelecom members that are currently seeking a waiver are CTC Video Services, LLC (CTC), CenturyTel, Inc. (CenturyTel), and Verizon Communications, Inc. (Verizon) (collectively, the "Petitioners", and each a "Petitioner"). USTelecom also supports the grant of waiver requests expected to be filed shortly by other similarly-situated USTelecom members.

[3] 47 U.S.C. §549(c).

[4] *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, Report and Order, 13 FCC Rcd. 14775, 14816, ¶103 (1998) (*Set Top Box Order*) (quoting S. Rep. No. 104-230, at 181 (1996)).

Each of the Petitioners seeks a temporary waiver of the Commission's set-top box rules for persuasive reasons. In some instances, a waiver of the set-top box rules is necessary due to unique technical considerations faced by the Petitioners.[5] These unique technical issues are simply not applicable to incumbent cable operators.[6] In the case of one Petitioner, a waiver is necessary since success of its digital transition hinges upon the availability of affordable set-top boxes, and, to date, low-cost compliant set-top boxes are not being produced.

Due to the rapidly approaching July 1, 2007 deadline, USTelecom urges expeditious grant of these requests. As new entrants in the multichannel video program distribution (MVPD) market, each of the Petitioners are faced with this impending deadline and it is imperative that sufficient time is afforded them so that appropriate business decisions can be made.

USTelecom's Members Are New Entrants in the Digital MVPD Market

USTelecom finds significant merit in the contention that grant of a waiver in each instance "is necessary to assist the development of a new or improved multichannel video programming or other service." Each of the Petitioners is either in the nascent stages of deploying new, commercial offerings of digital video programming services and advanced alternative broadband platforms to consumers in their respective territories, or is otherwise upgrading their analog video platform to digital.

Two of USTelecom's members seeking a waiver of the Commission's rules are in the early stages of deploying new advanced digital video technologies to consumers in their respective territories. First, CTC is the video affiliate of CT Communications, an incumbent local exchange company (ILEC) serving approximately 106,000 access lines in rural areas and small towns in west-central North Carolina. It has just launched the first phase of its new commercial offering of video programming services and advanced alternative broadband access within its ILEC territory through fiber facilities constructed directly to each home and business establishment. CTC's platform will bring advanced communications services – including video – to non-urban portions of west-central North Carolina, resulting in the presence of the first terrestrial video MVPD competition within the vast majority of its territory. As a small company with a nascent video service, CTC certainly has no leverage to induce manufacturers to make these set-top boxes available. Even if compliant set-top boxes were available, the additional

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[5] For example, Verizon is providing video over a hybrid QAM/IP network, rather than the pure QAM service offered by the cable companies. Because its service offering is delivered over a fiber network, rather than coax, the necessary hardware must be uniquely engineered to function over Verizon's network. As a result, the cable-centric standards that have developed do not work for the company.

[6] For example, Verizon was informed by its set-top box provider that due to Verizon's unique network infrastructure, developing a compliant set-top box system by the statutory deadline would "difficult if not impossible" and "would be significantly more complex, costly, and time-consuming than is typically the case." Verizon Reply Comments, p. 9 (filed Sept. 28, 2006) (CS Docket No. 97-80).

costs to CTC of deploying them would have a significant negative impact on its ability to build out this new digital network.

Similarly, Verizon is the process of carrying out an unprecedented network deployment that will bring fiber-optic facilities directly to the doors of millions of Americans. It is already providing its FiOS TV service, which combines aspects of traditional QAM-based digital cable with the advanced interactive features enabled by IP, over its Fiber to the Premises (FTTP) platform. In addition to bringing technological innovation to market, FiOS TV will bring, for the first time in most places, direct wireline competition to cable.

Finally, CenturyTel operates a small, analog cable system passing approximately 21,400 homes in small, rural communities in Wisconsin, Iowa and Colorado. It currently serves approximately 10,000 analog cable subscribers, many of whom are low-income households extremely sensitive to cost issues. Despite these challenges, CenturyTel is in the process of upgrading its network to an all-digital platform, and has committed to completing this upgrade by the February 2009 deadline. Again, even if CenturyTel had leverage to push availability of these boxes, deployment would severely hamper its efforts to convert to all-digital.

Despite their varying sizes, each of the Petitioners' status as a new entrant in the MVPD market providing cutting-edge digital services to consumers strongly supports the grant of a waiver.[7] The competition and innovation that each of the Petitioners would bring to the MVPD market is exactly the sort of competition and new technology that Congress had in mind when it adopted the waiver provision at issue here – and, indeed, the particular facts of each waiver petition fit squarely within the provisions of §76.1207 of the Commission's rules. Importantly, each of the Petitioners seeks only a temporary waiver of the Commission's rule.

These New Video Platforms Will Bring Vastly Improved Video and Broadband Services to Consumers

With regard to Congress' and the Commission's second waiver standard, USTelecom maintains that enforcement of the rules under Section 629 would have the unfortunate "effect of freezing or chilling the development of new technologies and service."[8] As the Commission recently noted in its Franchise Order, "traditional phone companies are primed to enter the cable

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[7] Indeed, in two recent orders addressing set-top box waiver requests, the Commission reached identical conclusions in each, noting that a commitment to transition to an all-digital network "would produce clear, non-speculative public benefits." *See Millennium Telcom, LLC d/b/a OneSource Communications*, Memorandum Opinion and Order, ¶16, DA-07-2009 (released May 4, 2007); and *GCI Cable, Inc.*, Memorandum Opinion and Order, ¶14, DA-07-2010 (released May 4, 2007).

[8] *Set Top Box Order*, p. 14816, ¶103 (quoting S. Rep. No. 104-230, at 181 (1996)).

market."[9] But the burdens that would result through the Commission's enforcement of its set-top box rules would be substantial.

Each of the Petitioners' respective services will bring improved digital video and broadband services to consumers in their respective territories. This enhanced video competition with cable incumbents will provide consumers with improved services that they demand, or have been heretofore absent in the competitive marketplace.

For example, Verizon is introducing into the market a competitive offering of new and improved services. Because it is utilizing a combined IP/QAM network, Verizon will be able to offer more high quality digital video programming than incumbent cable operators and brand new interactive features. These features – known as widgets – currently enable subscribers to see real-time traffic and weather for their respective geographic area. Future enhancements may enable subscribers to instantly access to news and sports information, and permit municipalities, schools and civic organizations to supply information to designated communities, accessible to subscribers in a particular area.

CTC's advanced services platform will enable consumers to receive the services they demand including increased HD programming, digital video recorder (DVR) capability, Video on Demand (VOD) and two-way functionality. Moreover, CTC's network will provide the fastest broadband pipeline in the area, offering speeds of up to 80 Mbps. Similarly, once CenturyTel's transition is complete, it will be in a better position to provide its customers with competitively priced enhanced video services – including HD, Video on Demand and DVR technology – as well high-speed broadband services. In light of the foregoing, a waiver for each of the Petitioners is plainly warranted, since each is either "develop[ing]" or "improv[ing] their respective MVPD and advanced services offerings.

Grant of Each Petitioner's Waiver Request is Warranted

Ultimately, USTelecom maintains that grant of the waiver in each instance would serve the public interest by helping achieve two critical Commission goals: increased broadband deployment and enhanced cable competition. As the Commission aptly concluded in its recent franchise reform order, increased broadband deployment and enhanced cable competition are "linked intrinsically" to a provider's ability to offer video services.[10]

Each of the petitioners, while varying in size, shares the same unique characteristic as new entrants in the MVPD market. Moreover, each of these new entrants is in the early stages of deploying new and improved video services to consumers throughout their respective territories, and is seeking waivers of limited duration. In sum, these Petitioners fit squarely within the

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[9] *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 5101, ¶2 (2007) (*Franchise Order*).

[10] *Franchise Order*, ¶62.

language of (and policy goals underlying) §76.1207 of the Commission's rules. In the interest of enhancing cable competition and increasing broadband deployment, USTelecom urges the Commission to smooth the entrance into the MVPD market for these nascent competitors through grant of these waivers.

In accordance with FCC Rule 1.1206(b)(1),[11] I am filing this *Ex Parte* Presentation with the Commission electronically for inclusion in the public record. Please feel free to call either me or Kevin Rupy (202) 326-7276 with any questions.

Sincerely,

Glenn T. Reynolds
Vice President, Policy

cc: Rudy Brioché
Michelle Carey
Rick Chessen
Cristina Chou Pauzé
Monica Desai
Heather Dixon
Rosemary Harold
Chris Robbins

[11] 47 C.F.R. § 1.1206(b)(1).